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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/781,381 | 02/18/2004 | James K. Hudson | AHUD.002 | 2761 |

7590 12/13/2004
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EXAMINER

MORRISON, NASCHICA SANDERS

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3632 | |

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,381

Applicant(s)

HUDSON, JAMES K.

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is the second Office Action for serial number 10/781,381, Tray and Cup Holder Combination, filed on February 19, 2004. Claims 1-7 are pending.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,421,459 to Mazzotti. With regards to claims 1, 2, and 4, Mazzotti discloses a tray assembly comprising: a downwardly extending, generally circular holder (4) including a first cavity defined by an exterior wall and bottom; a first tray (1) projecting laterally from the holder in a tray plane and defining a second cavity; and a crushable extension (4n) extending outwardly from and of unitary construction with the exterior wall and forming part of a tray support and adapted to engage an automotive cup holder.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,264,026 to Bradley in view of U.S. Patent 6,361,009 to Li. Regarding claims 1-7, Bradley discloses a tray assembly comprising: a downwardly extending, substantially

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circular holder (35) including a first cavity defined by an exterior wall and bottom; a first tray (13) projecting laterally from the holder in a tray plane and defining a second cavity; a second tray (21) projecting laterally from the holder in the tray plane and defining a second cavity, wherein the first and second trays are asymmetrically disposed so as to form an obtuse interior angle in the tray plane; a circumferential support (45) extending downwardly from the holder, the first tray and the second tray and disposed at the perimeter of the tray plane formed by the holder and first and second trays; left and right inner supports (31) concentric with the top of the holder cavity and extending upwardly from the tray plane (as at 41, 43) and of unitary construction with the holder and first and second trays; wherein the top of the holder, the first tray, and the second tray are in the tray plane so that the exterior wall of the holder (35) extends downwardly from the tray plane. Bradley does not teach the tray assembly including a crushable extension attached to the holder. Li discloses a holder (65) comprising a crushable extension (69, 71) extending downwardly along and of unitary construction with an external wall (adjacent 44) of the holder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the tray assembly of Bradley to include a crushable extension attached to the external wall of the holder and extending from the tray plane to the bottom of the holder because one would have been motivated to accommodate different lateral dimensions of the compartments into which the holder is inserted as taught by Li (col. 6, lines 1-5).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazzotti.

With regards to claim 5, Mazzotti discloses the tray assembly as applied to claims 1, 2

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and 4 above, and further teaches the tray assembly comprising: a second tray (tray 3 supporting fries 15 shown in Fig. 2) projecting laterally from the holder and defining a third cavity; wherein the first tray, second tray and holder are in a tray plane and the holder bottom is located beneath the tray plane at a sufficient distance to allow insertion of a cup (6) into the holder. Mazzotti does not teach the crushable extension (4n) extending from the tray plane to the bottom of the holder; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified crushable/deformable extensions (4n) to extend the entire length of the holder because one would have been motivated to provide flexibility along the entire length of the holder and further since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Response to Arguments

Applicant's arguments filed 9/27/04 have been fully considered but they are not persuasive.

In response to applicant's argument that Mazzotti fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "external" crushable extension and the ribs not facilitating inserting the compartment into a cup holder cavity) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Additionally, the ribs (4n) of Mazzotti do extend outwardly of the wall as shown in Figure 2.

Regarding applicant's argument that Li teaches spacers affixed to a stem rather than the external wall of a holder, examiner respectfully disagrees. As shown in Figure 4, the crushable extension/spacer (69, 71) is attached to the external wall of the holder (65).

In response to applicant's argument that "Li does not teach inserting a holder into an automotive cupholder", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Additionally, regarding applicant's argument that Li teaches away from the present invention, examiner respectfully disagrees. Applicant suggests that foam material is not suitable for forming a crushable extension of unitary construction but does not provide any additional support/reasoning for this argument. Therefore, examiner does not find that Li teaches away from the present invention.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching and motivation to combine the references is found in the references themselves and set forth in the rejections cited above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 2004/0206873 to Pastore et al. discloses a holder for insertion within an automobile cupholder.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 306-1113.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
12/2/04


ANITA KING
PRIMARY EXAMINER